immediately above. Any common line adjustment formula would simply "double count" the growth in LEC output that is already reflected in the TFP study. Indeed, a per line formula would double count 100% of this output growth, while a 50/50 formula would double count half of the growth. In short, the Commission can, and should, discard the common line adjustment formula in a revised LEC price cap plan.[217]

F. **The Commission Should Not Narrow Exogenous Cost Eligibility - Baseline Issues 6a, 6b and 6c.**

The Commission suggests that exogenous cost treatment under the price cap formula should be limited only to so-called "economic cost changes" beyond the LECs' control, which would exclude accounting changes, such as those related to modifications of the Generally Accepted Accounting Principles (GAAP) and the Uniform System of Accounts (USOA).[218]

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[217] If the Commission were to retain an adjustment formula, there is no rational basis for moving to a per line formula. The current 50/50 formula represents a compromise between advocates of a per minute formula (primarily the LECs) and advocates of a per line formula (primarily the IXCs). The formula was adopted because the Commission recognized that both LECs and IXCs contribute to common line growth. See Second Report and Order, supra, 5 FCC Rcd at 6794-95. Among other things, the Commission noted that LEC marketing initiatives, service innovations and network investment activities contribute directly to the growth in common line minutes. Id. at 6794. Nothing has changed in the intervening 4 years to alter that view.

[218] NPRM, ¶ 64.

USTA disagrees that exogenous cost treatment should be limited to economic cost changes. Historically, telephone companies have been regulated based on accounting costs. Indeed, the initial January 1, 1991, rates under price caps were based on accounting costs. If those accounting costs were misstated because the Commission's accounting rules did not reflect economic costs, the initial price cap rates in the aggregate were misstated, and any subsequent correction to the accounting costs must be reflected in the relevant price cap indices.[219]

For example, changes in the jurisdictional separations procedures do not change underlying economic costs. Yet, if the separations rules were to change so that additional costs were allocated to interstate, price cap LECs would be unable to recover those costs without an exogenous cost adjustment. This is so because the rate levels reflected in the initial price cap indices (PCIs) were based on the then-existing separations rules. If additional costs were now to be allocated to interstate, the LECs could not recover those costs from the intrastate jurisdiction, and without exogenous cost treatment, the costs could not be reflected in the LECs' interstate rates through a PCI adjustment.[220]

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[219] See Harris at 26.

[220] See id.

USTA recognizes that as access markets become more competitive, it may be appropriate to change the mechanics of how exogenous costs are treated under price caps. Currently, the rules require exogenous cost changes to be apportioned on a cost-causative basis among the price cap baskets.[221] As competition limits a LEC's ability to increase its rates across-the-board, and as competitive services are removed from price cap regulation, it may be appropriate for LECs to reflect exogenous cost adjustments associated with a specific service in the rates for that service.[222]

USTA opposes the Commission's suggestion that administrative procedures should be established to permit access customers or other groups to request exogenous treatment for cost changes.[223] No rule changes are needed to ensure that all appropriate exogenous cost changes come to the Commission's attention. Nothing in the Commission's current rules preclude any party to petition the Commission on any matter, including those related to exogenous cost treatment under price caps.

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[221] See 47 CFR § 61.45(d)(4).

[222] Further, to the extent that Commission-mandated requirements (*e.g.*, 800 data base) affect specific services (or groups of services), the costs associated with the requirements should be reflected in the prices charged for those services.

[223] NPRM, ¶ 65.

Finally, the Commission states that LECs generally initiate requests for exogenous cost changes, and have incentives to report exogenous cost treatment, only for those changes that might justify PCI increases.[224] It is true that the price cap LECs have requested more cap increasing changes than cap decreasing changes. But, this is because the Commission itself has been quick to identify those exogenous changes that would decrease the cap. Overall, price cap LECs have been subject to more cap decreasing exogenous cost changes than cap increasing changes. As set forth in the table appended as Attachment 10 to these comments, from 1991 through 1993, the net effect of all exogenous cost adjustments for price cap LECs has been an aggregate <u>reduction</u> of $730,100,000.

G. LECs Must Be Afforded Equal Treatment With Other Access Providers Under the Commission's Rules - Baseline Issues 9a and 9b.

The Commission recognizes that with the advent of switched access competition, it "is appropriate to consider revising our rules to equalize the treatment of LEC and CAP access rates in the calculation of AT&T's exogenous access costs."[225] Currently, AT&T is required to adjust its price cap indices only to reflect changes in what AT&T pays for

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[224] Id.

[225] NPRM, ¶ 86.

access to LEC networks.[226] Because AT&T need not pass on to its customers any savings in access from any source other than a LEC, a substantial, regulatory-induced incentive is created for AT&T to bypass LEC networks in favor of other sources.

USTA urges the Commission to eliminate this non-economic bias against LEC networks in either of two ways. The exogenous cost requirement could be removed from AT&T's price cap plan.[227] Alternatively, AT&T's exogenous requirement could be redesigned to ensure that AT&T's customers will receive the benefits of lower access rates without causing distortions in access markets. This can be accomplished by requiring that the AT&T exogenous adjustment include <u>all</u> access cost reductions, whether they originate from LEC price changes, CAP price changes, or substitution of LEC and CAP services.

In either case, the *status quo* cannot be maintained. In its current form, the AT&T exogenous adjustment places the LEC at an artificial disadvantage in AT&T's consider-

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[226] <u>See</u> <u>id</u>. at ¶ 84.

[227] If the Commission were to adopt this alternative, it should still require AT&T to pass through any access rate decreases that might accompany an increase in the EUCL charge. Such action is necessary to ensure that end users would benefit from lower long distance rates made possible by reduced access charges.

ation of the relative efficiencies of LEC versus CAP access services.

Additionally, as the Commission surmises,[228] increasing competition between LECs and CAPs provides reason to equalize other areas pertaining to the regulatory treatment of LECs and CAPs.[229] These areas, which are largely discussed in detail above, include:

> **Pricing Flexibility** - There is no reason for allowing LEC competitors pricing flexibility while denying the same to the LECs themselves. Unequal treatment in pricing flexibility places LECs at a substantial competitive disadvantage. For example, as recently as March 4, 1994, the Acting Chief of the Common Carrier Bureau rejected a LEC tariff revision that would have allowed ICB pricing in response to customer requests for proposals.[230] The proposed tariff mirrored a CAP's tariff language which was accepted by the Commission just months earlier. This limits the LEC's ability to compete with the CAPs for the customer's business.
>
> **Rate Structure** - The current rules dictate the structure of many LEC services. LEC competitors, however, can structure their services in any way that best meets the needs of their customers. Again, this handicaps the LECs' ability to compete.
>
> **Tariff Notice Periods** - LEC competitors can make tariff revisions on one day's notice, while LEC tariff revisions are often delayed for months. This not only makes it difficult for LECs to meet the needs of customers in a timely manner, it provides LEC competitors

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[228] NPRM, ¶ 86.

[229] See Harris at 26-28 for an extended discussion as to why it is important to equalize the regulation of LECs, CAPs and other service providers.

[230] See Southwestern Bell Telephone Company, Revisions to Tariff F.C.C. No. 73 - Transmittal No. 2297, DA 94-204, released March 4, 1994.

with advance notice of LEC offerings which is generally not otherwise available in competitive markets.

Cost Support and Demand Information - LECs, but not their competitors, must file voluminous cost and demand data with many filings, particularly those related to new services. This information unfairly provides LEC competitors with market intelligence about LEC networks, costs and customers.

Economic Depreciation Rates - LEC depreciation rates are established by Commission proceeding. LEC competitors, on the other hand, can set their own depreciation rates which more closely reflect economic cost and market characteristics.

Sharing and Disincentives for Investment - LECs must reduce their price cap indices when earnings exceed arbitrary thresholds. LEC competitors, including cable companies and AT&T, have no such requirement.

Service Area Descriptions - All interstate common carriers should include a detailed description of their serving areas in their tariff filings. Only LECs are required to include such information now.

Other Reporting Requirements - In general, all interstate common carriers should be subject to the same reporting requirements with respect to costs, investments, infrastructure development and service quality performance.[231]

In sum, the Commission should eliminate the current asymmetrical and burdensome regulations and policies that

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[231] Additionally, the Commission should apply the provisions of Part 68 of its rules, governing network connections, equally to both LECs and their competitors. Currently, only LECs must terminate their facilities at a "demarcation point," whereas non-LEC service providers can interconnect their facilities directly with customer premises equipment. See 47 CFR § 68.3.

handicap LECs in increasingly competitive markets, and which deny customers the full benefits of competition.[232]

H. There is No Reason to Increase Service Quality and Infrastructure Monitoring Requirements - Baseline Issues 7a and 7b; Transition Issue 4.

USTA has shown (Sections II.B.2 and 5 above) that customers have continued to enjoy high service quality under price caps, and LECs have continued to make network upgrades. Given these results, there is no basis for increasing either the service quality or network infrastructure development requirements that are placed on price cap LECs. Any additional reporting requirements would serve only to increase what are already substantial compliance costs without providing any countervailing benefits, and widen the existing asymmetry between LECs and their competitors.

USTA believes that the market place is the best source for service quality intelligence, and as the access market becomes increasingly competitive, customer actions will ensure that service quality remains at uniformly high levels.[233] For this reason, the Commission should reduce the

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[232] Professor Harris states that regulatory policies which "treat competitors differently can artificially bias customers' choices and distort entry and investment decisions." Harris at 16. Harris believes that regulatory "policies should promote and protect competition, not protect competitors from competition." Id.

[233] See Harris at 26.

existing reporting requirements as competition continues to develop in access markets.

I. No Changes are Necessary in the Rules Governing the Sales and Swaps of Exchanges - Baseline Issue 10.

The Commission seeks comment on whether changes are needed in the existing rules that pertain to the sales and swaps of exchanges between LECs.[234] The Commission is apparently concerned over "unintended windfalls and transactions that artificially increase subsidies."[235]

In USTA's view, no changes are necessary in the existing price cap rules covering sales and trades of exchanges. As the Commission recognizes, such transactions can "improve efficiency and service quality" and "can also promote better infrastructure development by placing exchanges in control of another LEC whose business plan makes it more committed to developing improved service in the exchange." Because each transaction presents its own unique set of circumstances, adoption of a new rule, such as an exogenous cost adjustment to reflect an increase in Universal Service Fund (USF) rates,[236] could unnecessarily discourage transactions that would otherwise have substantial public interest benefits. The Commission should continue to assess these trans-

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[234] NPRM, ¶ 88.

[235] Id.

[236] See id.

actions on a case-by-case basis, and deal with any necessary changes to its USF policies in a comprehensive proceeding on that program.

J. **The Commission Should Avoid Diminishing LEC Incentives by Too Frequent Review of the Price Cap Plan - Transition Issue 5.**

The Commission asks whether it should review the price cap plan more frequently than every fourth year, suggesting a review every second year, or even every year, on issues related to the level of competition in access markets.[237] The Commission notes, however, that frequent review might undermine the price cap efficiency incentives if LECs perceive that any increased earnings from efficiency gains may be eliminated at the review stage.[238]

USTA agrees with the Commission that a too-frequent review of the incentive features of the price cap plan could diminish LEC incentives to undertake efficiency measures, as well as innovation and network infrastructure development.[239] Moreover, USTA's pricing flexibility proposal, detailed above at Section IV.C, provides a mechanism to account for changes in the degree of competition in access

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[237] NPRM, ¶ 99.

[238] Id.

[239] See SPR Report, p. 48; NERA at 23. ("To obtain the full benefit of incentives to increase productivity growth and achieve the highest possible dynamic efficiency, the productivity offset must be stable over a long period of time . . . .")

markets without the need for a formal review proceeding. For these reasons, so long as USTA's proposal is implemented, the Commission need not undertake frequent or regular reviews of the LEC price cap plan.

K. GDP-PI Should Be Substituted for GNP-PI as the Measure of Inflation in the Price Cap Formula - Baseline Issue 11.

The Commission asks whether it should adopt revisions to the LEC price cap plan other than those specifically discussed in the NPRM.[240] USTA recommends that the Commission substitute the gross domestic product - price index (GDP-PI) for the gross national product - price index (GNP-PI) as the inflation measure in the price cap formula. This simple change will reduce administrative burdens and should have little, if any, impact on the LECs or their customers.

Beginning in 1991, the U.S. Department of Commerce, Bureau of Economic Analysis (BEA), discontinued publication of the 45-day estimate of the GNP-PI, substituting a 45-day estimate of the GDP-PI. While the BEA continued to publish a 75-day estimate of the GNP-PI, that estimate has not been released in time for incorporation in the price cap LECs' annual access tariff filings. Most LECs now use the 45-day GDP-PI estimate in their April filings, and then make an insignificant, but administratively burdensome, "true-up" to reflect the 75-day GNP-PI estimate in a June filing.

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[240] NPRM, ¶ 90.

In response to USTA comments on last year's tariff review plan, the Commission made no changes regarding the use of these indices, stating that the "exact relationship between these two indexes is unclear at this time."[241] The "exact relationship" can now be determined. Attachment 11 to these comments shows a comparison of the two indices for the period 1982 to 1993. This comparison demonstrates that the two indices are virtually identical.[242] Accordingly, the Commission should revise its rules to specify the GDP-PI as the inflation measure for the price cap formula.

V. STUDIES DEMONSTRATE THAT USTA's PROPOSAL WILL ENCOURAGE TELECOMMUNICATIONS INDUSTRY INVESTMENT, PROMOTE TECHNOLOGY DEPLOYMENT AND STIMULATE ECONOMIC GROWTH.

USTA commissioned the WEFA Group to perform an economic impact analysis of revising the LEC price cap formula. WEFA's analysis compares a baseline forecast of U.S. economic activity over the next ten years with a forecast that includes expected changes in LEC investment activity and

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[241] Commission Requirements for Cost Support Material to be Filed with 1993 Annual Access Tariffs, Order, DA 93-192, released February 18, 1993, ¶ 16.

[242] Technically speaking, the GNP-PI measures prices related to production by labor and property supplied by U.S. residents (*i.e.*, it includes U.S.-owned firms located outside of the U.S. and excludes foreign-owned firms located in the U.S.). The GDP-PI measures prices related to production by labor and property located in the U.S. (*i.e.*, it includes foreign-owned firms located in the U.S., but excludes U.S.-owned firms located outside of the U.S.). See U.S. Department of Commerce, "Survey of Current Business," August 1991, p. 8.

other impacts resulting from revisions to the price cap plan as proposed by USTA.[243] WEFA's analysis shows that USTA's proposal would, if adopted, result in the growth of employment, gross domestic product and consumer benefits over and above that which would occur if USTA's recommendations were not implemented.[244]

WEFA's analysis utilizes the results of Dr. Darby's study which shows that it is reasonable to expect increases in telecommunications industry investment ranging from approximately 5% in 1995 to 15% in 2004 as a result of adoption of USTA's price cap proposal.[245] WEFA also as-

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[243] The baseline forecast was based on WEFA's U.S. Economic Model which is used by many top business firms in their own planning and forecasting activities. The impact of USTA's price cap proposal was simulated through WEFA's Industry Analysis Model which is used to estimate and forecast the impact of changes in specific industries on other industries and on the economy as a whole. See WEFA at 4.

[244] The Commission seeks comment on the results of the Wharton Report which in 1987 predicted the economic impact of price cap regulation as applied to AT&T. NPRM, ¶ 33. As WEFA points out, while the basic analysis was similar, the current WEFA model, and approach, are different than those used 7 years ago. See WEFA at 5-6. The present economic model is more complete and it has been enhanced by doubling the number of industries covered by the model. Id. Further, the current study, unlike the 1987 study, incorporates such factors as telecommunications industry investment, telecommunications service quality and economy-wide technological change. Id. at 6.

[245] See Darby at 24; WEFA at 5, 7. In real terms, total telecommunications investment increases during the forecast period by more than $30 billion (in constant dollars) over the baseline forecast which itself assumes fairly substantial growth in telecommunications investment as compared to prior periods. See WEFA at 7-9, Table 1.

sumes that, driven by the enhancements to the public telecommunications network which are stimulated by USTA's proposal,[246] quality improvements in currently available and new telecommunications services will increase each year, ranging from a 1% increase in 1995 to 3% in 2004, for a cumulative quality gain of approximately 18%.[247] This assumption is consistent with the findings of Dr. Lawrence K. Vanston as set forth in his study on the impact of increased telecommunications infrastructure investment on technology adoption and service quality.[248] Finally, WEFA assumes that the rate of economy-wide technological change and technology implementation will average 0.01% higher per year from 1995 through 2004 as competition improves available services, more businesses and households utilize advanced technologies, and competitive threats from abroad intensify with a worldwide economic recovery.[249]

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[246] These enhancements include, most notably, adoption of ISDN capabilities, and the deployment of advanced broadband equipment and services.

[247] WEFA at 5, 9, Table 2. In WEFA's models, the quality improvements translate into an increase in the value of telecommunications service to end users. Id. at 9.

[248] See Vanston at 17.

[249] WEFA at 5. WEFA notes that its assumptions are conservative given the speed with which new telecommunications applications and processes could be developed and adopted when an enhanced, broadband network becomes available. Id.

Comparing the baseline forecast with the revised price cap projection shows a more robust U.S. economy as a result of the changes proposed by USTA. Accelerated LEC investment resulting from the proposal will improve service quality at a faster rate.[250] In response, businesses and households will adopt enhanced telecommunications services sooner than in the baseline forecast, yielding a somewhat faster rate of technological change over the forecast period.[251] This acceleration in service quality and in the deployment of enhanced technologies will result in increased use of telecommunications services by all sectors of the U.S. economy, leading to increases in the rate of overall technological change and productivity levels.[252] As a result, total real GDP will reach almost $8.8 trillion in constant 1994 dollars by 2004, surpassing the baseline forecast by over $60 billion in real terms.[253] The total cumulative gain is almost $280 billion over the next ten years.[254]

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[250] See Vanston at 17.

[251] WEFA at 1.

[252] WEFA at 1.

[253] Id. at 1, 2.

[254] Id. at 1. Among major GDP components, personal consumption expenditures gain nearly $148 billion cumulatively over the ten year period; business fixed investment increases by almost $70 billion; and residential investment rises approximately $28 billion. The federal budget deficit improves by nearly $150 billion cumulatively by 2004. Id. at 2.

This growth translates into tangible economic benefits. For example, in addition to the gains in the economic aggregates, housing starts will increase by almost 30,000 and automobile sales will increase by over 100,000 units in 2004 relative to the baseline forecast.[255] The nation's balance of trade will improve by almost $6 billion in 2004 compared to the baseline forecast.[256] Greater domestic and foreign demand translate into a cumulative gain in industrial production of over 1.3% during the ten-year period.[257]

With USTA's proposed price cap revisions, the economy will gain over 500,000 additional jobs over the forecast period as compared to the baseline.[258] The additional jobs would be spread throughout the economy, with all major industry groups participating in the gains, including the service sector, manufacturing, retail and mining.

In terms of consumer benefits, due to the efficiencies gained throughout the economy, the annual inflation rate (as measured by the GDP deflator) will be 0.15 of a percentage point lower on average per year over the next ten years.[259]

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[255] WEFA at 17.

[256] Id.

[257] Id.

[258] Id. at 2. This gain will improve the unemployment rate by 0.4 of a point. Id.

[259] Id. at 2.

Cumulatively, the overall price level will be 1.4% lower by 2004. Consumer price inflation will decrease by an average of 0.18 of a percentage point per year over the next ten years, saving consumers approximately $136 billion in real terms in 2004 on their total purchases.[260] At the same time, disposable income will be about $30 billion higher in real terms in 2004 than under the baseline forecast.[261]

In sum, adoption of USTA's proposal will further important Commission objectives by increasing investment, encouraging a more rapid deployment of new technology, and stimulating economic growth. These benefits will not be limited to the telecommunications sector, but will be enjoyed by virtually all segments of the U.S. economy.

VI. RELATIONSHIP TO OTHER PROCEEDINGS - Baseline Issue 12.

The Commission seeks comment on how to "best harmonize the review of LEC price caps with other proceedings and proposals."[262] As an initial matter, it is clear from a review of the NPRM, that the Commission raises issues similar to those identified by USTA's Petition in RM-8356. These issues include the need to change rate structure rules and pricing guidelines as markets become more competitive,

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[260] Id. Cumulatively, total consumer savings is over $580 billion for the ten year period. Id.

[261] Id.

[262] NPRM, ¶ 91.

the need to change the new service pricing rules, and the need to examine existing incentives and their effect on universal service, economic growth and infrastructure development.

As explained above, the recommendations set forth in USTA's Petition are appropriately considered in this proceeding and are necessary for achieving several important Commission goals including, *inter alia*, universal service,[263] infrastructure development, economic growth, new service introduction, network efficiency and balanced competition. Further, the issues covered by USTA's Petition and the NPRM are affected by the same external factors that are rapidly transforming access markets such as converging technologies, changing customer needs, and increasing competition. They are also both intrinsically related to various Commission regulatory initiatives including expanded interconnection for switched and special access services adopted in CC Docket No. 91-141,[264] and restructured local trans-

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[263] USTA recognizes that the Commission may wish to address specific universal service issues in a separate proceeding, and believes that such a proceeding could proceed concurrently with this proceeding. See USTA's Comments in RM-8388, Inquiry into Policies and Programs to Assure Universal Telephone Service in a Competitive Market Environment, filed December 16, 1993.

[264] See Expanded Interconnection with Local Telephone Company Facilities, CC Docket No. 91-141, Report and Order and Notice of Proposed Rulemaking, 7 FCC Rcd 7369 (1992), modified on recon., 8 FCC Rcd 127 (1992), modified on second recon., 8 FCC Rcd 7341 (1993); Second Report and Order, 8 FCC Rcd 7374 (1993).

port services adopted in CC Docket No. 91-213.[265] For all of these reasons, the instant review of LEC price caps should incorporate the recommendations made in USTA's Petition so that appropriate changes can be implemented effective January 1, 1995.

This proceeding is also linked to the Commission's ability to achieve depreciation reform in CC Docket 92-296.[266] As noted above (Section IV.A), elimination of the sharing mechanism from the LEC price cap plan would remove the last policy barrier to allowing LECs to control their own depreciation rates.[267] LECs should be permitted to set depreciation rates by filing minimal supporting documentation demonstrating that they have used generally accepted and approved depreciation methods.[268] The LECs' competitors are able to establish and change their depreciation rates to match the economic lives of the assets they employ

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[265] See Transport Rate Structure and Pricing, CC Docket No. 91-213, 7 FCC Rcd 7006 (1992); modified on recon., 8 FCC Rcd 5370 (1993), modified on second recon., 8 FCC Rcd 6233 (1993).

[266] See Simplification of the Depreciation Prescription Process, Report and Order, supra.

[267] Professor Harris recognizes that the "need to regulate depreciation is driven by sharing, as the argument goes: so long as the rate of return is regulated - which sharing requires - you [must] also regulate the rate base, *i.e.*, prescribe depreciation rates." Harris at 21.

[268] USTA recognizes that full depreciation reform might require changes to Section 220(b) of the communications Act. See 47 USC § 220(b) (1993).

in rendering access services.[269] In contrast, although subject to the same factors influencing the recovery of their assets, LECs are often burdened with non-economic depreciation lives when the Commission substitutes its own view for that of the companies' management.[270]

In CC Docket No. 93-251, the Commission has proposed changes to its affiliate transaction rules.[271] The Commission adopted those rules prior to price cap regulation to address its concern that LECs might cross-subsidize non-regulated activities from regulated operations.[272] As explained above (Section IV.A), however, the affiliate transaction rules are not necessary to prevent cross-subsidization under price cap regulation so long as price caps are fully severed from the last remnants of rate of return regulation, in particular the sharing mechanism. Accordingly, the Commission should eliminate the sharing mechanism

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[269] The record in CC Docket No. 92-296 establishes that LECs have significantly lower depreciation rates than cable operators and IXCs.

[270] See Harris at 21-23 for an extended discussion as to why the Commission should eliminate the depreciation prescription process.

[271] Amendment of Part 32 and 64 of the Commission's Rules to Account for Transactions between Carriers and Their Nonregulated Affiliates, supra.

[272] See Separation of Costs of Regulated Telephone Service from Costs of Nonregulated Activities, 2 FCC Rcd 1298, recon., 2 FCC Rcd 6283 (1987), further recon., 3 FCC Rcd 6701 (1988), aff'd sub nom., Southwestern Bell Corp. v. FCC, 896 F.2d 1378 (D.C. Cir. 1990).

and withdraw the affiliate transaction rules for price cap LECs.

In CC Docket No. 93-179, the Commission is reviewing the method by which rate of return is calculated in light of the price cap plan's sharing and lower formula adjustment mechanisms.[273] As discussed above (Section IV.A), rate of return regulation has no place in a price cap plan and, thus, the Commission need not address this issue either in this or the Docket 93-179 proceeding.

In CC Docket No. 93-124, the Commission has proposed a new operator services category for, what was previously, the Traffic Sensitive Basket.[274] The Commission tentatively concluded that the creation of a separate category for operator services was necessary in order to limit LEC pricing flexibility.[275] USTA submits, however, that competitive alternatives exist for operator services, and there is no reason to impose additional restrictions on LEC pricing for these services by creating a new service category.

In CC Docket No. 92-275, the Commission proposed to reduce from quarterly to annually the frequency with which

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[273] See Price Cap Regulation of Local Exchange Carriers, Rate of Return Sharing and Lower Adjustment Formula, 8 FCC Rcd 4415 (1993).

[274] See Treatment of Operator Services Under Price Cap Regulation, 8 FCC Rcd 3655 (1993).

[275] Id. at 3656.

price cap carriers must file reports regarding new services.[276] USTA urges the Commission to eliminate new service reporting in its entirety.

Finally, in CC Docket No. 93-240, the Commission is considering whether judgements and litigation costs can be reflected in earnings offsets for price cap companies or alternatively, whether these costs must be borne by the shareholder through a "below the line" adjustment.[277] If the Commission eliminates the sharing mechanism as urged by USTA, there would be no need for an earnings offset to reflect costs associated with litigation.

VII. CONCLUSION

This proceeding is one of the most important ever undertaken by the Commission. While the Commission has conducted many significant, ground-breaking proceedings over the last quarter century, seldom has there been a proceeding such as this one which will have a major impact on both the telecommunications industry and the nation's economy, and which will help shape a new Information Age.

The issues facing the Commission may appear complex, but the choices are clear. The Commission can either cling

[276] See New Service Reporting Requirements Under Price Cap Regulation, 8 FCC Rcd 438 (1993).

[277] See Accounting for Judgements and Other Costs Associated with Litigation, 8 FCC Rcd 6655 (1993).

to the remnants of rate of return regulation for the price cap LECs, or it can implement a form of pure incentive regulation and, thus, promote economic growth, network efficiencies, the development of a National Information Infrastructure, and the wide-spread deployment of advanced telecommunications services. The Commission can either continue a rigid regulatory scheme for LECs that was implemented over ten years ago under entirely different industry and market conditions, or it can adopt a flexible regulatory plan that encourages new service offerings and network innovation. The Commission can either handicap LEC response to competition in access markets, or it can provide for balanced and fair competition so that consumers can reap fully the benefits of competitive prices and services.

USTA urges the Commission to seize this opportunity to position the telecommunications industry as a driving force of positive change for all Americans well into the Twenty-First Century. For all of the reasons set forth in these comments, USTA firmly believes that its proposal will enable the Commission to do just that. Accordingly, the Commission should adopt USTA's proposal in its entirety.

Respectfully submitted,

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May 9, 1994

ATTACHMENT 1

Executive Summary of USTA's Expert Reports on
LEC Price Cap Reform

by

Robert G. Harris